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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 DONALD ARTHUR EVANS, IV,

10 Petitioner,

11 vs.

12 R. BAKER, et. al.,

13 Respondents.
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Case No. 3:17-cv-00173-LRH-VPC

ORDER

15 The court ordered petitioner to show cause why this action should not be dismissed because
16 it is completely unexhausted and because petitioner had plenty of time to file a post-conviction
17 habeas corpus petition in state court. ECF No. 3. Petitioner has filed a response. ECF No. 4. The
18 court is not persuaded, and the court dismisses this action.

19 Essentially, petitioner presents three arguments. First, he complains about the misdeeds of
20 both the prosecutor and his attorney. These are arguments about the merits of his claims, and this
21 court cannot consider the merits of his claims without petitioner first exhausting his available
22 remedies in state court. 28 U.S.C. § 2254(b). Second, petitioner believes that the state district court
23 would not consider his claims in an unbiased and impartial way. Regardless, federal law requires
24 petitioner to present those claims to the state district court and, if the claims are denied, to then raise
25 the claims on appeal. Then this court may consider petitioner's claims. Third, petitioner stated that
26 he did not know until he read this court's order that time remained to file a post-conviction habeas
27 corpus petition in state district court. He knows now. If petitioner continues to file papers in this
28 court instead of filing a petition in state district court, then the time to file in state district court

1 might expire. If that happens, then it will be unlikely that any court will ever consider his claims on
2 their merits, and it will be petitioner's fault.

3 Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the
4 court will not issue a certificate of appealability.

5 IT IS THEREFORE ORDERED that the clerk shall add Adam Paul Laxalt, Attorney
6 General for the State of Nevada, as counsel for respondents.

7 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
8 copy of the petition and this order. No response is necessary.

9 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice. The clerk
10 of the court shall enter judgment accordingly and close this action.

11 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

12 DATED: 5/10/17

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15 LARRY R. HICKS
16 United States District Judge
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